



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,895	10/25/2001	Kurt G. Ripperger	6016.102US	7648

7590 01/14/2005

Lawrence R. Oremland  
Lawrence R. Oremland, P.C.  
Suite C-214  
5055 East Broadway Boulevard  
Tucson, AZ 85711

EXAMINER

BURGESS, BARBARA N

ART UNIT	PAPER NUMBER
----------	--------------

2157

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/003,895

Applicant(s)

RIPPERGER, KURT G.

Examiner

Barbara N Burgess

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Zeineh (US 2004/0008894 A1).

As per claim 1, Zeineh discloses a system for transmitting an image file to an end user system, comprising:

- Compression software for compressing the image file into different file formats, and test software configured to test the downloading speed capabilities of the end user system on line and in real time as the system prepares to transmit the compressed file (paragraphs [0008, 0017, 0030, 0043-0045, 0050]);
- System configured to send the compressed file in one file format if the downloading speed of the end user system is slower than a predetermined minimum level and to send the compressed file in another file format if the downloading speed of the end user system is faster than the predetermined minimum level (paragraphs [0006, 0033, 0038, 0042, 0050, 0056-0057, 0059, 0068, 0070]).

Art Unit: 2157

As per claim 4, Zeineh discloses a system for transmitting an image file to an end user system, comprising:

- A test device configured to test the downloading speed of the end user system on line and in real time as the system prepares to transmit the image file (paragraphs [0008, 0017, 0030, 0043-0045, 0050]);
- System configured to send the image file in one format if the downloading speed of the end user system is at or slower than a predetermined speed and in another format if the downloading speed of the end user system is faster than the predetermined speed (paragraphs [0006, 0033, 0038, 0042, 0050, 0056-0057, 0059, 0068, 0070]).

As per claim 5, Zeineh discloses a system for transmitting an image tile on line to an end user system, comprising:

- A test device configured to test the downloading speed of the end user system on line and in real time as the system prepares to transmit the image file (paragraphs [0008, 0017, 0030, 0043-0045, 0050]);
- System configured to send the image file in one size file if the downloading speed of the end user system is at or slower than a predetermined speed and in another size file if the downloading speed of the end user system is faster than the predetermined speed (paragraphs [0006, 0033, 0038, 0042, 0050, 0056-0057, 0059, 0068, 0070]).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeineh (US 2004/0008894 A1) in view of Murphy (US 2004/0078825 A1).

As per claim 2, Zeineh discloses a system as defined in claim 1, wherein said system has a default file format if the downloading speed of the end user system is faster than the predetermined level.

Zeineh does not explicitly disclose said system is configured to further test the end user system for one or more predetermined file player modules if the downloading speed of the end user system is faster than the predetermined level, said system being further configured to transmit the compressed file in the default file format if the system determines that the system downloading speed is faster than the predetermined speed but the end user system does not have any of the predetermined file player modules.

However, in an analogous art, Murphy discloses the streaming file is a continuously delivered series of packets of digital data, receivable by a remote computer, which if running the appropriate software using appropriate plug-ins or codecs, can decode the stream as video content. The appropriate software running on the receiving computer is dependent on the type of streaming file (paragraphs [0030, 0042]).

Art Unit: 2157

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's testing the system for a predetermined file player module enabling the end system to decode the stream as video content in order to play it.

As per claim 6, Zeineh discloses a method for transmitting an image file on line to an end user system.

Zeineh does not explicitly disclose the steps of testing the end user system in real time and on line to determine if the end user system can play an image file in a predetermined file format, further testing the downloading speed of the end user system and transmitting the image file in the predetermined format if the on line test determines the end user system has a minimum predetermined downloading speed and can play the image file in the predetermined format, and transmitting the image file in an alternative format if the on line test determines the user system cannot play the image file in the predetermined file format.

However, in an analogous art, Murphy discloses the streaming file is a continuously delivered series of packets of digital data, receivable by a remote computer, which if running the appropriate software using appropriate plug-ins or codecs, can decode the stream as video content. The appropriate software running on the receiving computer is dependent on the type of streaming file (paragraphs [0030, 0042]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's testing the end user

Art Unit: 2157

system in real time and on line to determine if the end user system can play an image file in a predetermined file format enabling the end system to decode the stream as video content in order to play it.

As per claim 7, Zeineh a method for transmitting an image file on line to an end user system.

Zeineh does not explicitly disclose the steps of testing the end user system in real time and on line to determine if the end user system can play an image file in a predetermined file format, if the on line test determines the end user system can play the image file in the predetermined format, further testing the end user system on line and in real time to determine the downloading speed of the end user system and also if the end user system has one or more selected types of players for the image file, and transmitting the image file in a file format which is compatible with a selected player if the further testing determines the end user system has a minimum downloading speed and the selected player.

However, in an analogous art, Murphy discloses the streaming file is a continuously delivered series of packets of digital data, receivable by a remote computer, which if running the appropriate software using appropriate plug-ins or codecs, can decode the stream as video content. The appropriate software running on the receiving computer is dependent on the type of streaming file (paragraphs [0030, 0042]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's testing the end user system in real time and on line to determine if the end user system can play an image

Art Unit: 2157

file in a predetermined file format enabling the end system to decode the stream as video content in order to play it.

As per claim 8, Zeineh discloses a method for transmitting an image file on line to an end user system.

Zeineh does not explicitly disclose the steps of testing the end user system in real time and on line to determine if the end user system can play an image file in a predetermined file format, if the on line test determines the end user system can play the image file in the predetermined format further testing if the end user system has one or more selected types of players for the image file, and transmitting the image file in a file format and in a file size which compatible with a selected player if the further testing determines the end user system has a minimum downloading speed and the selected player.

However, in an analogous art, Murphy discloses the streaming file is a continuously delivered series of packets of digital data, receivable by a remote computer, which if running the appropriate software using appropriate plug-ins or codecs, can decode the stream as video content. The appropriate software running on the receiving computer is dependent on the type of streaming file (paragraphs [0030, 0042]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's testing the end user system in real time and on line to determine if the end user system can play an image



Art Unit: 2157

file in a predetermined file format enabling the end system to decode the stream as video content in order to play it.

As per claim 9, Zeineh discloses a method as defined in any of claims 6 through 8.

Zeineh does not explicitly disclose wherein said image file comprises a motion picture file. However in an analogous art, Murphy discloses high-resolution video content that is to be used or purchased by the end user may also be made available as downloadable digital files, such as the following types: Digital Video (DV), QuickTime, Audio Video Interlaced (AVI), Motion Picture Engineers Group (MPEG), Wave Audio (WAV), or MP3 (MPEG-3, audio only) (paragraphs [0031, 0039]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's image file comprising a motion picture file in order for the system to execute motion pictures.

As per claim 10, Zeineh discloses a system as defined in any of claims 1 through 5.

Zeineh does not explicitly disclose wherein said image file comprises a motion picture file. However in an analogous art, Murphy discloses high-resolution video content that is to be used or purchased by the end user may also be made available as downloadable digital files, such as the following types: Digital Video (DV), QuickTime,

Art Unit: 2157

Audio Video Interlaced (AVI), Motion Picture Engineers Group (MPEG), Wave Audio (WAV), or MP3 (MPEG-3, audio only) (paragraphs [0031, 0039]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Murphy's image file comprising a motion picture file in order for the system to execute motion pictures.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeineh (US 2004/0008894 A1) in view of McManus et al. (hereinafter "McManus", US 2002/0034721 A1).

As per claim 3, Zeineh discloses a system as defined in claim 1.

Zeineh does not explicitly disclose wherein said test software comprises a test file having a known size, and a software module that starts a timer and downloads the test file on the user system, said software module being configured to determine the end user system speed required to download the test file to determine the downloading speed of the end user system.

However, in an analogous art, McManus discloses the balance of download speed and image quality is tested by experimenting with the compressed image with the goal of producing the acceptable images from the specific content. The acceptability of the resulting image is evaluated. If the image quality or size of the specific content is not acceptable, alternative file formats, compression level, or color depth may be used, and the digital images are again evaluated and compressed accordingly (paragraphs [0012, 0029-0030]).

Art Unit: 2157

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate McManus test file in order to ensure that the appropriate speed and image quality is achieved.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara N Burgess whose telephone number is (571) 272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Barbara N Burgess  
Examiner  
Art Unit 2157

January 7, 2005

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Application/Control Number: 10/003,895

Page 11

Art Unit: 2157